IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2109 OF 2006
IN
WRIT PETITION NO. 3401 OF 2005

M/s. Patel Goyal Associates & anr. ... Applicants

v/s

1. Komgassory Mahindra Kumar & ors. ... Respondents

Mr. K.K. Singhvi, Sr. Advocate with Mr. G.S. Godbole for the applicant.

Mr. Nitin A. Kulkarni for the original respondent.

Mr. Suresh Kumar for the respondent No.1 to 3.

CORAM: V. C. DAGA, J.

DATED: 28TH SEPT., 2006

P.C.:

1. Heard learned counsel for the parties to the petition.

2. Mr. Singhvi, learned senior counsel appearing for the applicant in C.A. No. 2109 of 2006 is seeking the clarification of the order dated 17.4.2006 passed in W.P. No. 3401 of 2005 which runs as under:-

> "Heard. Rule returnable early. Interim stay in terms of prayer clause (b) subject to a condition that the petitioner shall not sell

> their assets either directly or under orders of any authority excluding higher Court."

3. The aforesaid order prohibits the Company from selling or transferring any property or interest or part of interest therein in favour of any third party.

4. Mr. Singhvi brought to my notice two registered development agreements duly executed by the Swastik Rubber Products Ltd. both dated 3.3.2004 executed much prior to the order dated 17.4.2006 in favour of Developers; whereby the property in question has been given for development.

5. The aforesaid documents of development were challenged before the learned Single Judge of this Court in A.O. No. 158 of 2005 decided on 7.3.2006; wherein the learned Single Judge was pleased to hold that by virtue of the said agreements of development both dated 3.3.2004, the property mentioned in development agreements has already been transferred in favour of third party. In that view of the matter, it has become necessary to consider whether or not the said property; which is a subject matter for development; is a subject matter of order dated 17.4.2006.

6. Having heard the rival parties and perused petition,

civil application and order dated 17th April, 2006, it is needless to mention that if the documents of development of property in question had a effect of transferring the property rights in favour of the third party as held by the learned Single Judge of this Court, as referred hereinabove; obviously, the said agreement of developments will have to be treated as documents of transfer and the said transactions shall have to be allowed to operate in true letter and spirit so as to enable parties to complete the transactions in question.

7. In this view of the matter, it is clarified that the order dated 17.4.2006 shall not embrace the property which is a subject matter of development agreements placed on record and shall operate against the properties which were and are properties of the Company as on 17.4.2006.

8. The assets which were already transferred under the valid orders of the competent authority or Court shall not be the subject matter of the said order dated 17.4.2006.

9. With the above clarification, the civil application

stands allowed.

10. Mr. Kulkarni learned counsel appearing for the respondents-workers seeks stay to the operation of this order for a period of four weeks. Considering the facts and circumstances, I do not see any reason not to grant such prayer made by Mr. Kulkarni. In this view of the matter, this order is stayed for a period of four weeks.

.....

(V.C. DAGA, J.)